

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GILBERT FIGUEROA,

Plaintiff,

v.

GILL, *et al.*,

Defendants.

Case No. 2:22-cv-00477-ART-DJA

ORDER PARTIALLY SUSTAINING  
PLAINTIFF'S OBJECTION  
(ECF NO. 42) TO REPORT AND  
RECOMMENDATION  
(ECF NO. 41)

*Pro se* Plaintiff Gilbert Figueroa brings this §1983 action against officers of the Las Vegas Metropolitan Police Department, alleging they needlessly shot him, causing him to suffer nerve damage and to lose a testicle, in violation of his Fourth Amendment rights. Before the Court is Mr. Figueroa's Objection (ECF No. 42) to Magistrate Judge Daniel J. Albregts' Report and Recommendation (ECF No. 41) (R&R) recommending the Court deny Mr. Figueroa's Motion for Leave to File an Amended Complaint (ECF No. 35). The Court grants Mr. Figueroa leave to amend his complaint to add a conspiracy claim but denies leave to add other proposed claims.

**I. BACKGROUND**

In April of 2020, members of the LVMPD shot Mr. Figueroa while arresting him in Las Vegas. (ECF No. 12 at 4.) As a result, Mr. Figueroa suffered nerve damage, leg pain, and PTSD, and doctors surgically removed one of his testicles.

In his First Amended Complaint ("FAC"), which is the operative complaint at the time of this order, Mr. Figueroa brought a claim for Fourth Amendment excessive force against the officers who arrested him and a municipal liability claim for failure to train and deliberate indifference against the LVMPD. (*Id.* at 4-7.) Mr. Figueroa's FAC was screened in September 2022. (ECF No. 13.) His

1 municipal liability claim was dismissed without prejudice, and his Fourth  
2 Amendment claim was allowed to proceed. (*Id.* at 6.)

3 On April 17, 2023, Mr. Figueroa sought leave to amend his FAC by (1)  
4 adding the Las Vegas Metropolitan Police Department to his existing Fourth  
5 Amendment claim; (2) reasserting his municipal liability claim against LVMPD;  
6 and (3) adding a new claim for conspiracy against two named officer defendants  
7 and a Doe officer. (ECF No. 41 at 1; *compare* ECF No. 12 *with* ECF No. 35-1.) The  
8 deadline for amending pleadings was January 3, 2023. (ECF No. 23 at 1.)

9 Judge Albrechts then issued an R&R recommending the Court deny Mr.  
10 Figueroa's motion without prejudice because Mr. Figueroa had failed to  
11 demonstrate good cause for amending his FAC. (ECF No. 41 at 3.) According to  
12 Judge Albrechts, Mr. Figueroa's first two proposed amendments aimed to add  
13 LVMPD to his Fourth Amendment claim and reasserted his municipal liability  
14 claim against LVMPD. Judge Albrechts denied leave to amend because the  
15 underlying facts of those claims were available to Mr. Figueroa "since the  
16 beginning of this case." (*Id.* at 2.) Mr. Figueroa's third proposed amendment  
17 added a conspiracy claim that was based on newly-discovered bodycam footage  
18 that was not previously available to Mr. Figueroa. (*Id.*) Judge Albrechts denied  
19 leave to add the conspiracy claim because Mr. Figueroa had failed to explain when  
20 he received the footage or why he waited until after the deadline to amend his  
21 FAC. (*Id.* at 3.)

22 In his Objection to Judge Albrechts' R&R, (ECF No. 42), Mr. Figueroa  
23 provided a timeline detailing his diligence in seeking the relevant bodycam footage  
24 and explaining why it took him until April to file his Motion for Leave to Amend.  
25 Mr. Figueroa did not explain why he failed to add his claims against LVMPD  
26 sooner.

27 Defendants have since objected that Mr. Figueroa should not be given leave  
28 to amend his FAC because he has failed to demonstrate good cause, inclusion of

1 the new claims would be futile, and amendment would cause Defendants undue  
 2 prejudice by prolonging the litigation and forcing parties to reopen portions of the  
 3 discovery process. (ECF No. 43.)

## 4 **II. DISCUSSION**

5 This Court “may accept, reject, or modify, in whole or in part, the findings  
 6 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where  
 7 a party timely objects to a magistrate judge’s report and recommendation, the  
 8 Court is required to “make a de novo determination of those portions of the [report  
 9 and recommendation] to which objection is made.” *Id.* Because Mr. Figueroa  
 10 objected to Judge Albregts’ R&R, (ECF No. 42), the Court’s review is *de novo*.

11 When, as in this case, the deadline for amending pleadings under a  
 12 scheduling order has passed, the Court’s must analyze motions to amend  
 13 complaints under Rule 16(b). *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271,  
 14 1294 (9th Cir. 2000) (court correctly applied Rule 16(b) because time to amend  
 15 pleadings lapsed before party moved to amend); *Johnson v. Mammoth Recreations,*  
 16 *Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (applying Rule 16(b) once deadline to  
 17 amend pleadings has passed). Under Rule 16(b)(4), a “schedule may be modified  
 18 only for good cause and with the judge’s consent.” “Rule 16(b)’ s good cause  
 19 standard primarily considers the diligence of the party seeking the amendment.”  
 20 *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir.  
 21 2013), *aff’d sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015) (internal  
 22 quotation marks and citations omitted).

23 Despite his earlier failure to show good cause, Mr. Figueroa’s Objection  
 24 provides a detailed explanation of his diligence and inability to bring his  
 25 conspiracy claim sooner. As a prisoner, Mr. Figueroa’s access to legal documents  
 26 is limited. Mr. Figueroa received the relevant bodycam footage on January 6,  
 27 2023. (ECF No. 42 at 2.) On January 18, he was informed he needed to schedule  
 28 an appointment to view that footage. (*Id.*) He promptly sent a request to view the

1 footage on January 25 but was not allowed to access it until February 27—and  
2 then only for one hour per week. (*Id.*) On March 5, Mr. Figueroa sent a discovery  
3 request to Defendants in order to learn the names of the officers he hoped to sue.  
4 (*Id.*) On April 3, he received a list containing those names. (*Id.*) On April 16, he  
5 filed a motion to amend his FAC. (*Id.*)

6 Mr. Figueroa has not demonstrated the same diligence in bringing his  
7 proposed claims against the LVMPD. The Court agrees with Judge Albregts that  
8 Mr. Figueroa could have brought these claims at the beginning of this litigation.  
9 Indeed, he has tried to bring his municipal liability claim before, and he has not  
10 alleged any new facts since the Court dismissed that claim. (*Compare* ECF No. 12  
11 *with* ECF No. 35-1.) Given the available facts, Mr. Figueroa has not met Rule  
12 16(b)'s good cause standard for his claims against the LVMPD.

13 Defendants object that allowing Mr. Figueroa to amend his FAC would be  
14 futile and result in prejudicial delays. (ECF No. 43 at 7.) After a party has shown  
15 good cause under Rule 16(b), it must demonstrate that amendment is proper  
16 under Rule 15. *Johnson*, 975 F.2d at 608 (citation omitted). “The court considers  
17 five factors [under Rule 15] in assessing the propriety of leave to amend—bad  
18 faith, undue delay, prejudice to the opposing party, futility of amendment, and  
19 whether the plaintiff has previously amended the complaint.” *United States v.*  
20 *Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011). Courts “should freely give  
21 leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Defendants concede that  
22 a conspiracy claim against the officers is not precluded as a matter of law. (ECF  
23 No. 43 at 6.). Any resulting delay from amendment would not so prejudice  
24 Defendants as to outweigh Rule 15's other factors. Mr. Figueroa, who has  
25 amended his complaint only once, has shown that he was diligent, and there was  
26 no bad faith or undue delay on his part. Here, amendment is in the interest of  
27 justice.

### 28 III. CONCLUSION

1 It is ordered that Judge Albregts' R&R (ECF No. 41) is rejected in part and  
2 adopted in part.

3 It is further ordered that Mr. Figueroa's Motion for Leave to Amend (ECF  
4 No. 35) is granted in part and denied in part. Mr. Figueroa may amend his  
5 complaint to add his proposed conspiracy claim but may not add any of his other  
6 proposed claims or defendants.

7 Dated this 3<sup>rd</sup> day of November 2023.

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10 ANNE R. TRAUM  
11 UNITED STATES DISTRICT JUDGE  
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